

EXHIBIT F

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**MICHEL KECK
Plaintiff,**

vs.

**MIX CREATIVE LEARNING
CENTER, LLC, et al,
Defendants.**

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Civil Action No. 4:21-cv-0430

DECLARATION OF JACQUELINE KENNEALLY

1. My name is Jacqueline Kenneally. I am over the age of eighteen, have never been convicted of a felony, and am fully qualified to make this declaration. I have personal knowledge of the statements herein, which are true and correct. I make the following declaration in support of Defendants' Motion for Partial Summary Judgment in this matter.

2. I am the sole proprietor and 100% owner of Mix Creative Learning Center, LLC. ("Mix Creative" or "Defendant"), and am the corporate representative of Mix Creative in this matter. I have been the sole owner of Mix Creative since its inception in 2005. I handle the day-to-day operations of Mix Creative, and have personal knowledge of the statements in this Declaration, which are true and correct.

3. Defendant operates Artmix as a school in Houston, Texas since 2005, which is a small business that teaches art and art history to young children, with a focus on knowledge of

art history, art styles, and artists. Artmix has always attempted to adhere to the Houston Independent School District's rules and guidelines with regards to emergencies of every kind. On March 15, 2020, with the announcement that COVID was declared a medical emergency in the United States, Artmix had to close its doors. Artmix cancelled all in-person programs and launched the Artmix to-go virtual lessons and launched an online shop.

4. In June of 2020, Artmix re-opened at 10% in-person capacity, as permitted by the State of Texas. Defendant restructured the Artmix studio to be able to host a maximum of 15 students with social distancing measures and masks for everyone for camps and weekly lessons. Artmix prepared kits in generic but nice card-board boxes with supplies for students to join in Zoom® calls for virtual camp and/or individual virtual weekly lessons.

5. In November of 2020, the decision was made to provide Artmix kits with a signature blue box in the online store for at-home teaching and learning art by students, due to ongoing restrictions on in-person learning.

6. The steps in preparing the Artmix kits, including the kits alleged to infringe the copyrights of Michel Keck in this lawsuit (the "ARTMIX KITS"), were as follows:

- a. Defendant performed art history research on artists and themes on the Internet and in art books in the Artmix library and in bookstores.
- b. When researching art history and art on the Internet based on places, things, or a theme such as dogs or pets, Defendant performed a Google® search for a relevant phrase such as "paintings of dogs, or cats, or animals" for example, and then reviewed the images in the search results.
- c. Once an appealing image was found, Defendant clicked on the publicly available image and attempted to learn more about the art and the artist.

- d. Next, after research on the art history and particular art, style, and artist, Defendant decided if the artist was someone that Artmix students would benefit from learning about, including their history, process and story. Since the average Artmix student is from ages 8-10, it was important that the artwork was age-appropriate and that the student could use the inspiration from the art style and artist to successfully make their own personal artwork inspired by the particular art history, style, and artist.
- e. If the art, style, and artist was selected, a PowerPoint® presentation was made with publicly available images of the artist's works along with historical and biographical information about the artist from, for example, the artist's publicly available website.
- f. Defendant created historical narratives and samples made with supplies that were included in the Artmix kit, and a step-by-step lesson plan was developed for the teaching of the art history, art style and artist, so that the student could create their own personal artwork with the supplies and inspiration provided in the kit.
- g. A sample of the Artmix kit with all the supplies, the lesson plan, and all the components of the kit was assembled as a prototype and photo images were taken for the Artmix online store.
- h. Defendant added the Artmix kit to the online store on the Artmix website for individuals to purchase.
- i. Once an Artmix kit was ordered, Defendant prepared the kit in-house, with the supplies that were required for the age of the student who purchased the kit.

j. Defendant assembled the kit and shipped it to the client. The client then had an opportunity to join Defendant in a Zoom® call to work together to create the personal artwork.

7. In the teaching of art, art history, and art styles, using the same manner that other artists were selected for Artmix artist-inspired kits or for other means of instruction, Defendant decided that Michel Keck was someone that Artmix students would benefit from learning about, and that the Michel Keck artwork used in the ARTMIX KITS was age-appropriate and that the student could use the inspiration from the Michel Keck artwork in the ARTMIX KITS to successfully make their own personal artwork inspired by the artist.

8. As a small business owner, I, in my capacity as owner of Defendant, did all the research for the Artmix curriculum and Artmix kits, including the ARTMIX KITS, and prepared the slides with the historical and biographical information about the art, art styles, and artists.

9. In preparing the ARTMIX KITS, to the best of my recollection, Defendant obtained the Michel Keck artwork while doing Internet art history research for artists, styles, and works of art to incorporate into art lessons for Artmix students of approximately ages 8-10. To the best of my recollection, Defendant did a Google® search for “paintings of dogs” or some similar phrase, and on the publicly available Google® search results page, clicked on “Images” in the search bar. To the best of my recollection, Defendant saw images of Michel Keck’s artwork in the search results, and then right clicked on one of the publicly available images of the artwork and selected “copy image,” and then pasted and saved the image locally on the computer or into a document on the computer, and used the copy to create the artwork included in the ARTMIX KITS. I do not recall which specific image from the search results was selected, but to the best of my recollection, the specific images that were selected did not bear a © symbol.

10. Artmix only made 6 Keck-inspired ARTMIX KITS. The ARTMIX KITS were offered for sale on the Artmix website from approximately November 1, 2020, until the date when Defendant was served with Plaintiff's complaint in this case, on or about February 28, 2021.

11. When Defendant received notification of this lawsuit involving Plaintiff's copyrights and the ARTMIX KITS that allegedly infringed those copyrights, Defendant immediately stopped selling the accused art kits and removed the entire category of art kits from the Artmix Internet website.

12. Prior to discontinuing its sales of Artmix artist inspired kits, Defendant prepared individual Artmix kits with supplies for children ages three and up, for teaching and learning of art history, styles and artists, and so that the students could make "masterpieces" inspired by such art history, styles, artists, landscapes, holidays, and culture of places all around the world. Defendant would also occasionally post images of student-created art on its Instagram page, and the artists were tagged for the purpose of giving the artist an accolade and gratitude for their inspiration.

13. Art from various artists was included in the Artmix kits so that the students could learn about media, styles and techniques that world-renowned and lesser-known artists use, as inspiration for the students to create their own works of art. Consistent with industry custom in the field of art education, Artmix would use examples of a particular artist's work (from publicly available images on the web) to teach the particular art style and to inspire the young students to create their own personal art with the supplies and inspiration provided by the art kits.

14. Very often, artists would reply and share how much they like the students' masterpieces, including Amy Sherald (who painted the Obama's portraits) who reposted Artmix

students' masterpieces on her Instagram. Other artists who replied and applauded the work from artmix students include Simon Bull, Sonni, Wayne Thiebaud, Peter Anton, Philipp Jordan, and many others. No artist has ever informed Defendants that the use of the art constituted a copyright infringement. Moreover, Defendant has never had any training or education on copyright infringement law.

15. Defendant often used the phrase "inspired by" or a similar phrase in a descriptive manner for the Artmix kits for educational and teaching purposes to refer to the art style, art and artist whose artwork was part of the lesson and to give credit to the artist, as well as to indicate to students that the kit was inspired by the artist as opposed to originating from the artist. Artmix is not in the business of selling art works or reproductions of art by well-known artists.

16. Based on the importance of teaching students about artists, art history, culture, and the creative process, I have taught the same way since 2005 and have communicated and engaged with artists around the world to share students works of art in social media since 2012, and neither I nor Mix Creative have ever been sued for copyright infringement by the artists, until this lawsuit. Based on this history, I always believed that my actions were appropriate and acceptable in view of industry custom in the field of art education.

17. Defendants used Ms. Keck's artworks towards the purpose of creating a unique and interactive "teaching tool" for providing art lessons to children, so that they could learn to appreciate different artists and art styles and be inspired to create their own independent works of art. Defendants' packaging of the Artmix kits included not only the images of Ms. Keck's works provided for "inspiration" to the students, but also collage-style puzzle pieces, paint brushes and various colors of paints so that the students would have the necessary materials to create their own masterpieces.

I declare under the penalty of perjury that the foregoing statements are true and correct and within my personal knowledge.

Executed this 14th day of October, 2022, at Harris County, Houston, Texas.

Jacqueline P. Kenneally
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